IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3919 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Labour and Industrial Tribunal judges ?

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STATE OF GUJARAT – Petitioner(s)

Versus

KARSANBHAI JESANG – Respondent(s)

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Appearance :

MS MITA PANCHAL, AGP, for Petitioner(s) : 1,

RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 16/09/2005

ORAL JUDGMENT

1.Heard Ms.Mita Panchal, learned Assistant Government Pleader on behalf of petitioner – State of Gujarat.

2.This matter came up for admission hearing before court on 11.6.2001 on which date, Rule was issued making by it returnable on 3.7.2001, and ad-interim relief, in terms of para 5(C) was granted till then. Thereafter, on 28.8.01, interim relief was extended upto

6.9.2001. From perusal of original record, it appears that ad-interim relief has not been extended thereafter. Not only that, no such request was made on behalf of the State for extension of ad-interim relief. From 7th September, 2001, the impugned award passed by the Labour Court, Surendranagar, was required to be implemented by the State of Gujarat because thereafter, no interim relief was continued and it came to an end on 6th September, 2001. This is the sorry state of affairs. This petition was admitted since the Government Pleader pointed out judgment dated 31.1.2001 of the Honourable Supreme Court passed in Civil Appeal No.1684 of 1998 in the case of State of Gujarat & others v. Pratamsingh Narsinh Parmar, whereby the Honourable Supreme Court held that `forest' is not an `industry'.

3. In the present petition, State of Gujarat has challenged the award dated 5.8.2000 passed by

Labour Court, Surendranagar, in Reference (LCS) No.327 of 1992, mainly on the ground that the Forest Department is not an `industry' and it is covered by decision of Honourable Supreme Court referred to above, the workman had not completed 240 days during any year and Labour Court had not given sufficient opportunity to petitioner for defending the case and to produce the evidence on record and passed the award without considering written statement filed by the petitioner. The workman had raised dispute after a period of 8 years and therefore, on ground of delay and latches, award is required to be set aside.

4. Labour Court, Surendranagar, has granted reinstatement with continuity of service while setting aside the termination order with 20% back wages with effect from 15.6.92 with cost of Rs.500/-. Notice of Rule issued by this court was served upon the respondent-

workman, but inspite of service, no appearance is filed on behalf of respondent before this Court. However, considering fact that matter is more than four year old and award has been stayed by this Court, matter is taken up in absence of respondent and heard, finally.

5.The workman had filed statement of claim vide ex.4, the petitioner had filed written statement vide ex.8, and thereafter vide ex.9, workman was examined before Labour Court, and cross examined by petitioner. Thereafter, matter was adjourned for evidence of petitioner but inspite of various opportunities given by Labour Court, petitioner did not lead any oral evidence before the Labour Court though an advocate was engaged by petitioner in Reference. Petitioner not availed opportunities given by Labour Court. Thereafter, Labour Court, Surendranagar, closed the evidence of

petitioner and learned advocates for both parties were heard by Labour court. Labour Court considered oral evidence of workman and in absence of any evidence being led by petitioner, ultimately, it came to conclusion that termination order is passed by petitioner violating section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Accordingly, termination order has been set aside and reinstatement with continuity of service is directed, however full backwages have not been awarded for interim period from date of termination because of delay in raising industrial dispute by workman. Labour Court has also not granted full back wages because some part of gainful employment was admitted by workman. Therefore, Labour Court has granted 20% back wages form date of Reference , 15.6.92.

6.Along with petition, the petitioner has

produced copy of statement of claim and a copy of written statement. Except that, no other document is placed on record of petition by petitioner.

7. Learned AGP Ms. Mita Panchal has raised contentions before this court that in written statement, contention raised by the petitioner that Forest Department is not an industry, has not been examined by Labour Court and therefore, Labour Court has committed gross error in not examining the contention raised in written statement. She relied upon the decision of Full Bench of this Court in case of Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat reported in 2004(2) GLR 1488. She relied upon paragraph 26 of Judgment which has been read over before this court in detail. No doubt, it is clear that at the time of admitting the matter, decision of the Apex Court which has been relied upon

has not been again relied upon by AGP today while making her submissions before this Court. Second contention raised by learned AGP is that workman had not completed 240 days in preceding twelve months and therefore, Labour Court has committed gross error in setting aside the termination order. She also raised contention that it is burden upon respondent workman to prove continuous service of 240 days which has not been proved by workman. She also submits that delay in raising industrial dispute itself fatal to the Reference. The labour court has not considered said question, therefore, award is bad. She emphasized her submission that in spite of petitioner not producing any material, it was duty of Labour Court to examine contention which has been raised by petitioner in written statement. She read over whole award before this Court. She also pointed out to this Court the presence of

respondent workman marked by petitioner with effect from 1.2.85 to 30.6.85. Except that, no document has been shown to this court by learned AGP. Except as referred above, learned AGP has not raised any other contention before this Court for consideration.

1.First aspect is that State of Gujarat was represented by AGP before Labour Court. Learned advocate Shri B.J.Shah appeared before Labour Court on behalf of State of Gujarat. After filing written statement by petitioner, respondent-workman was examined vide ex.9. According to deposition of workman, he was working as Watchman in Wadhvan Range Forest for more than four years. He was receiving daily wages of Rs.11-20 ps. at the end of month. He also deposed before Labour Court that each month, he was receiving work for 26 days and at the time of

termination, no notice pay and retrenchment compensation was paid to him, no notice was given to him, no seniority list has been published by petitioner and after termination of respondent-workman, one new employee Jagabhai Govindbhai was appointed in his place. At that occasion, he was not called by petitioner. After termination, he remained unemployed, but he maintained the family by doing some miscellaneous work where he was getting Rs.200 to Rs.300 per month. He also made a statement before Labour Court that if petitioner was ready and willing to take him back in service, he is prepared to join the service. The workman was cross examined by advocate for petitioner. In cross examination, he gave the date of termination as 10.6.85. He admitted that he raised dispute in year 1992 and he was

working as Chowkidar but he denied that he was engaged for miscellaneous work and he left the job of his own. He also denied the facts in cross examination saying that it is not true that he had not completed 240 days' continuous service in preceding 12 months from date of termination. He also denied that he voluntarily stopped to report for work. At present, he stated, he is doing miscellaneous work, but inspite of efforts, he was unable to get any job. That in his family, there were four members and he was not having any land. Against this evidence of respondent-workman, facts are proved to the effect that workman remained in service as Chowkidar for four years continuously. He had completed 240 days' continuous service in preceding twelve months from the date of termination. His service were

terminated on 10.6.85 and he raised dispute in 1992. He had not left the job and he was prepared to work if petitioner called him. Against this evidence, petitioner has not led any oral evidence and not produced any documentary evidence, except the working days for period from 1.2.85 to 30.6.85. According to Labour Court, various opportunities were given to petitioner for oral evidence as well as documentary evidence. But those opportunities were not availed by petitioner in spite of fact that advocate has been engaged by petitioner. No details have been produced on record as to what happened with advocate as he had not lead any oral evidence before Labour Court. It is surprising that Government worries about amount of public exchequer on one hand and on other hand, against a poor workman, the matter is

allowed to be proceeded without leading any evidence, and after award is made, a writ petition is filed in this court challenging said award. Labour Court has closed right of evidence of petitioner by ex.14. No efforts were made by petitioner to reopen such right in Labour Court. Thereafter, learned advocate from both the sides argued before Labour Court. Even at that occasion, AGP did not thought it proper to request Labour Court to reopen the stage of evidence which closed by Labour Court vide Exh.14 but argued matter without leading any kind of evidence. Therefore, in this background, Labour Court has relied upon oral evidence of the respondent-workman vide ex.9 and came to conclusion that his evidence remained unchallenged because no oral evidence was led by petitioner and no documentary evidence has been produced

and proved by petitioner before Labour Court. The Labour Court, in terms came to conclusion that whatever contentions were raised in written statement by petitioner have not been proved by petitioner by leading oral evidence as well as by producing documentary evidence. Labour Court further observed with regard to working days which were produced by petitioner that on what basis same have to be believed since no evidence has been led by petitioner before Labour Court to prove these working days before Labour Court. The Labour Court relied upon oral evidence of workman and came to conclusion that service of the workmen were terminated without notice or notice pay and retrenchment compensation, therefore, section 25-F of the Act has been violated which is considered to be mandatory provision and non compliance

thereof renders order of termination void ab initio as decided by Apex Court in case of Mohan Lal v. Management of Bharat Electronics reported in AIR 1981 SC 1253. The Labour Court also observed that in place of respondent-workman, one new employee Jagabhai Govindbhai was also appointed by petitioner because there is no contrary evidence produced by petitioner. Therefore, ultimately, Labour Court has examined matter on the basis of material place before it by respective parties. Labour Court has not granted back wages for period from date of termination till date of dispute i.e. 15.6.92. Further, Labour Court has granted 20% back wages from date of Reference, 15.6.92 after considering the evidence of workman to admit some part of gainful employment.

8.Learned AGP has emphasized her submission on

decision of Full Bench in case of Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat (supra). Sub para 5 of Paragraph 26 is relevant, which is quoted as under:

> "26.5 We also answer part of question No.1 of the questions referred in Special Civil Application Nos.4715 of 2003 and 4435 of 2001, and the question No.2 referred in Special Civil Application Nos.8259 of 1996 and 2566 of 1997 in the negative, by holding that, the Forest and Environment Department of the State Government is not an "industry" under Sec.2(j) of the Industrial Disputes Act, 1947, and the question whether any of its units, establishments or undertakings, is an industry or not, will depend upon the nature of the work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which the concepts are understood in the field of industrial economy, satisfying the third ingredient of the triple ingredients test that such unit, establishment or undertaking of the department can be said to be "industry" unless falling in categories removed by constitutional and competently enacted legislative provisions from the scope of

Industrial Disputes Act as indicated in clause (c) of Item IV of the guidelines laid down by the Supreme Court in Paragraph 161 of the Bangalore Water Supply Case (supra), including law falling under Arts. 309 to 311 of the Constitution."

In said decision, Full Bench has therefore held that, question whether any of its units, establishments or undertakings, is an industry or not, will depend upon the nature of work done by such entity and only when the activity undertaken amounts to an activity for production or distribution of goods and/or services for satisfying wants and desires of consumers, in the sense in which concepts are understood in field of industrial economy, satisfying third ingredient of triple ingredients test that such unit, establishment or undertaking of department can be said to be "industry" unless falling in categories removed by constitutional and competently enacted legislative provisions from scope of Industrial Disputes Act. Therefore, in view of above findings of Full Bench of this Court, whether particular unit or entity in which respondent workman was working is an industry or not depends upon activities of unit or entity in which respondent was working. No evidence has been led before Labour Court by petitioner that what activities were carried out by Unit or entity in which respondent-workman was working. No material has been shown to Labour Court by which Labour Court could

> have examine question whether contentions raised by petitioner are correct or not. When contention is raised by petitioner that Forest Department is not an "industry", then it is burden upon petitioner to prove by material evidence before Labour Court that looking to such activities, a unit or entity or establishment is not an "industry". No such efforts have been made by petitioner before Labour Court. It is further contended by petitioner that whether the Forest Department is an "industry" or not is purely a question of law. I fail to appreciate this submission when Full Bench of this Court has decided issue that it depends upon activity of unit or entity or establishment, and as such, it is a pure question of fact, and not question of law to be examined by this Court.

9. The contention raised by Ms. Panchal, learned AGP that it is burden upon respondent to prove continuous service of 240 days. According to her submission, said burden is not discharged by workman by producing any evidence and on that count, award is bad. The contention raised by Ms. Panchal cannot be accepted for a simple reason that no documents were given by petitioner to workman

when workman was engaged as a daily wager watchman. It is not case of petitioner that at time of appointment or engagement of workman, he was given order in writing. It is also not case of petitioner that during service period, workman was given presence card or muster roll or identity card and wage slip. When employer engaged workman orally and terminated service also orally and during service period, no proof of any document given to workman about presence card, identity card and wage slip, then, on what basis, workman can discharge burden to prove continuous service of 240 days preceding the date of termination. In absence of any document with workman, only mode to discharge burden is to give oral evidence before labour court. Workman has deposed before the labour court at Exh. 9 and his oral evidence was cross examined by advocate for petitioner before labour court. This oral evidence led

by workman has supported averments made by respondent in his statement of claim establishing that he remained in continuous service of more than four years and also completed 240 days continuous service. Thus, averments made by respondent in his statement of claim were supported by oral evidence of respondent. When workman discharged his burden by leading oral evidence of himself, then, burden will shift upon employer to rebut such evidence of workman. Law on this point is discussed with a view to appreciate contention of petitioner. In case of Range Forest Officer versus ST Hadimani and another reported in 2002 AIR SCW 909. Apex court observed that in case of workman that he had worked for 240 days in a year preceding his termination, which claim is denied by the management, onus lies upon the workman to show that he had in fact worked for 240 days in a year. [See also : Rajasthan State

Ganganagar S. Mills Ltd. vs. State of Rajasthan and others reported in 2005 AIR SCW 3160]. In absence of proof of receipt of salary or wage slip or record of appointment, mere filing of affidavit by workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination. Hon'ble apex court also observed that Tribunal was not right in placing onus on Management without first determining on the basis of cogent evidence that respondent had worked for more than 240 days in a year preceding his termination. Facts of this case are to the effect that workman was examined before labour court and deposed that he had worked for more than four years continuously and completed 240 days continuous service. So, it is not case only based upon affidavit of workman. In Municipal Corporaion, Faridabad versus Siri Niwas reported in 2004 (103) FLR 187, Hon'ble apex court observed

that burden of proof was on workman to show that he had worked for 240 days in preceding twelve months prior to his termination. Apex court further observed that if party, despite possession of best evidence, had not produced the same which would have gone against his contention. In case of Manager, Reserve Bank of India, Bengalore versus S. Mani and others reported in (2005) 5 SCC 100, after considering aspect of onus and burden of proof with respect to evidence sufficient to discharge and failure of employer to prove a defence (of abandonment of service) if sufficient or amounted to an admission, discharging the said burden, the apex court held that initial burden of proof is on workmen to show that they had completed 240 days of service. Apex court held that onus of proof does not shift to employer nor is the burden of proof on the workman discharged merely because employer fails to prove a

defence or an alternative plea of abandonment of service; filing of affidavit of workman to the effect that he had worked for 240 days continuously or that the workman had made repeated representations or raised demands for reinstatement is not sufficient that can discharge the said burden; other substantive evidence needs to be adduced to prove 240 days' continuous service. Apex court further observed that filing of affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to a conclusion that workman had in fact worked for 240 days in a year. Such evidence might include proof of receipt of salary or wage slip for 240 days or record of appointment or engagement for this period or terms and conditions to his offer of appointment or by examination of any evidence in support of his case. View taken by apex court in aforesaid decision is

based upon facts of that particular case. It is correct that initial burden is upon workman to be discharged by legal evidence that he had completed 240 days continuous service within 12 months preceding the date of termination, how to discharge burden by workman in absence of any cogent evidence when employer has not given any single document to him.

10. In Bank of Baroda versus Ghemarbhai Harjibhai Rabari reported in 2005 Labour Industrial Cases 2279, apex court distinguished case of Range Forest Officer versus SD Hadimani (supra) and observed as under in para 8 of the judgment :

> "While there is no doubt in law that the burden ofproof that a claimant was in the employment of a Management, primarily lies on the workman who claims to be a workman. The degree of such proof so require, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the bank, that he did work as a driver of the car belonging to the bank during the relevant period which come to more than 240 days of work. He has produced 3

> vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. As against this, as found by the for a below, no evidence whatsoever has been adduced by the bank to rebut even this piece of evidence produced by the workman. It remained contended by filling a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the Executive concerned and not that of the bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genunine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signature were taken in the Register maintained by the bank. In this factual background, the question of workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the bank."

11. Apex Court has also considered case of ST Hadimani in case of Essen Deinki v/s. Rajeev Kumar reported in 2003 SCC L/S 13. Relevant discussion made by apex court in para 13 is reproduced as under :

" It is against this order of the Labour Court that the High Court was approached under Article 227 of the Constitution and the latter relying upon the decision of this Court in American Express [(1985) 4 SCC 71: 1985 SCC (L&S) 940] came to a conclusion that the workman in fact has completed 240 days of service and as such allowed writ petition and did set aside the award of the Labour Court wih a direction that the petitioner be reinstated in service with full back wages. It is this finding which is under challenge before this Court with the grant of leave under Article 136of the Constitution. The record of proceedings referred to thus depicts that the Labour Court while rejected the reference on appreciation of facts, the Hight Court thought it fit to reverse it on the basis of the law laid down by this Court in American Express. It would thus be convenient to note the opinion expressed by this Court in American Express at this juncture. This Court in para 5 of the Report has stated as below (SCC pp.76-77)

'5. Section 25F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under section 25F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision which is of relevance is Section 25-B(2) (a) (ii) which to the extent it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous

service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is tob e made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The learned counsel for the management would urge that only those days which are mentioned in the Explanation to Section 25-B (2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression 'actually worked under the employer'. The explanation is only clarificatory as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression 'actually worked under the employer' is capable of comprehending the days during which the workman was in employment and was paid wages - and we see no impediment to so construe the expression - there is no reason why the expression should be limited by the Explanation. Togive any other meaning than what we have done would bring the object of section 25F very close to frustration. It is not necessary to give examples of how section 25F maybe

> frustrated as they are too obvious to be stated.'
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> 14. Whilst it is true that the law seems to be rather well settled as regards the 'bread and butter' statutes and the welfare legislation introduced in the statute book for the purposes of eradication of social malady, it is a duty incumbent on the law courts to offer a much broader interpretation since the legislation is otherwise designed to prevent perpetration of any arbitrary action and no contra view thus is plausible. American Express affirms such a view."

12. If facts of this case are examined in light of observations of apex court in aforesaid decision, then, it would appear that respondent has deposed before labour court and proved continuous service of more than 4 years as well as continuous service of 240 days preceding his termination. His oral evidence was cross examined by advocate for petitioner. In cross examination, case of workman was not disproved. As against that, no rebuttal evidence or any material contrary to oral evidence of workman was produced by

petitioner. Therefore, degree of such evidence was required to vary from case to case. In Bank of Baroda (supra), workman was having evidence of three vouchers and same were produced by workman. In facts of this case, not a single document has been given by petitioner to respondent which can be produced by workman to prove his case. So, in total absence of any documentary evidence deposition of workman with cross examination by other side is best evidence to discharge burden of workman in proving continuous service of 240 days within 12 months preceding the date of termination. Recently, in case of Manager M/s Mittal Steel Mfg. Co. versus Chotha Ram and anr. Reported in 2005 (106) FLR 654, Rajasthan High Court observed after considering case of Range Forest Officer versus ST Hadimani; Municipal Corporation Faridabada v/s. Siri Niwas and another relevant decisions on the issue and

then observed as under in para 23 of the judgment:

> "23. Heard learned Counsel for the parties. It may be mentioned that the respondent workman has stated that he has worked with the petitioner company from 11.1.98 to 10.3.99, on 11.3.99, he was not taken on duty by the employer and, on 14.12.98, he received injuries during the course of employment. The employer has admitted before the Labour Court that no appointment orders are given to the workman.The employer management has also admitted that they used to maintain the payment register and the attendance register, but not a signle document was produced by them before the Labour Court as evidence in order to establish the fact that the respondent workman was not engaged by them. It is pertainent to mention here that when the attendance register and payment register were lying with the employer and, as admitted by the employer that the appointment orders are not given to the workmen, then, why these documents were not produced before the labour court. The workman was not given any appointment order or any document by the employer, therefore, he was not in a position to produce any document in support of his claim, except to file an affidavit and state on oath that he was engaged by the employer, he worked for the aforesaid period and his services were terminated by the employer witohut complying with the provisions of the Industrial Disputes Act, 1947. Since no document was lying with the respondent workman, he could not produce

> the same before the Labour Court. Then, in such a situation, onus automatically shifts on the employer to produce sufficient/adequate documents in support of his denial, as has been admitted by the Management before the Labour Court that the attendance register and pay registers are maintained by them, but they were not produced before the Labour Court as an evidence. In these circumstances, the Labour Court has no option but to draw an adverse inference against the employer and pass a suitable award in favour of the respondent workman."

13. In similar case before Rajasthan High Court in case of Regional Manager RIICO Ltd. Versus Judge, Industrial Tribunal cum Labour Court Jodhpur and others 2005 LLR 602, the workman had worked under RIICO Ltd. From 1996 to 31.12.1998, for more than 240 days; RIICO has failed to produce any document to show as to what was nature of appointment. In light of these facts, it was observed by Rajasthan High Court as under in para 19 :

> "There is no dispute to the effect that the applicant has worked with the RIICO. The RIICO itself has not denied this

fact. Now, saying of the RIICO that the applicant (respondent No.2) was not given any appointment on record, but she has worked on a contract basis, is absolutely incorrect. The RIICO has also failed to produce any written contract, work order or vouchers of pay bill, in respect of applicant (respondent NO.2), in order to make its position clear. In addition to this, the RIICO has also failed to produce any document as to what was the nature of the appointment of the applicant. (Respondent NO.2). The only document submitted by the RIICO is the note sheet which, at all, does not make the position clear. It may be that the applicant (respondent NO.2) had been given appointment on regular basis, therefore, no document was produced by the RIICO. The applicant (respondent No.2) has clearly stated that she was made payment on the basis of voucher bills But the RIICO has not produced any document pertaining to voucher bills. Apart from that, there is no rebuttal of the claim of the applicant by the RIICO. Not only that, even the RIICO has not been able to prove the case that the applicant (respondent NO.2) has been given appointment through M/s. Private Security Services, on contract basis. In absence of any rebuttal by the RIICO, the learned Labour Court has rightly given the findings that the termination of the services of the applicant Kumari Neena Agrawal (Respondent NO.2 by the RIICO w.e.f. 15.7.98 is illegal. She should be taken back in service and be given 30% back wages from the date of the reference i.e. 20.1.1001 (2001). Thus, in this view of the matter, the Labour court has rightly held that the

> applicant (Respondent NO.2) Kumari Neena Agrawal is a workman within the definition of the Industrial Disputes Act, 1947, as she has worked for 240 days as a workman with the RIICO. The findings of the learned Labour Court do not call for any interference."

15. In view of aforesaid two decisions of Rajasthan High Court and also in view of facts of this case wherein muster roll was maintained by petitioner, presence of workman was marked by petitioner, salary was paid by petitioner to workman, vouchers are maintained by petitioners and yet same are not produced before labour court and also not raised any dispute or denied fact of service of four years by respondent workman in its written statement. In written statement petitioner has not disputed fact of working of four years with the petitioner and completion of 240 days continuous service. No such averments have been made by it in its written statement. On the contrary, it was admitted by petitioner in its written statement that salary was paid to workman for whatever work done by workman as per

rules. When it was a clear case of workman that he worked for years as Chowkidar and that he completed 240 days continuous service in twelve months preceding the date of termination, then, instead of making such vague averments, petitioner ought to have come out with a clear case in its written statement about period of work and also whether completes 240 days continuous service as alleged or not and petitioner ought to have produced evidence to that effect before labour court. Best evidence such as muster roll, wage slip etc. to rebut case of workman was in custody of petitioner and yet it has not thought it proper to produce it before labour court. It also not thought it proper to move labour court for reopening its right to produce evidence which was closed by labour court as per order passed below Exh. 14. Inspite of maintaining muster roll, vouchers, presence register and payment slip, no such documents were produced and proved by petitioner before the

labour court. Therefore, since averments made by workman in his statement of claim about factum of working days have not been controverted by petitioner by producing any rebuttal evidence and since the oral evidence of petitioner to that effect has remained unchallenged and uncontroverted after cross examination of workman by the advocate for petitioner, labour court was right in coming to conclusion that workman has completed 240 days continuous service in twelve months preceding date of termination and that he was working as watchman for four years. By deposing on oath before labour court, workman has discharged his burden to prove his case and thereafter, burden has shifted upon employer to disprove same by producing documentary evidence and proving same by oral evidence of its witness. However, no such efforts have been made by petitioner by leading any oral as well as documentary evidence. In such circumstances, what would be duty of labour court, has been examined

by Hon'ble apex court in case of M/s. Tannery and Footwear Corporation of India v. Raj Kumar and another [2002 AIR SCW 44] wherein no material adduced by employee in support or by employer in rebuttal of claim. Labour court, relying on appointment letter and order of termination, held that employee had worked for 240 days. Apex court held that view taken by labour court is proper, employee is entitled to reinstatement. Apex court, in para 3 of that decision, observed as under :

> “3. Learned counsel for the appellant submitted that the burden of proof lay upon the respondent to establish that he was in the employment of the appellant and had worked for a period of 240 days in a year before the termination of his services and no such material was made available. It is clear that neither the respondent produced any material in support of his case nor to rebut the claim made by him any material was produced by the appellant. In these circumstances,Labour Court came to the conclusion that on appreciation of the mateial on record, such as Exhibit E-1 (Appointment letter) and Exhibit E-4 (the order of termination that the services of the respondent are not required from 20.7.1976) that respondent had worked

> with the appellant for 240 days in a year. If that was the material on which the Labour Court placed reliance as no other material was placed by the appellant in rebuttal of the same, we think that the view taken by the labour court is in order. Therefore, the High Court was justified in not interfering with the award made by the Labour Court."

16. Therefore, in view of above discussion and considering observations made by apex court while keeping facts of this case in mind, according to my opinion, respondent workman has discharged his burden in proving continuous service of 240 days as well as continuous service of more than four years as Watchman and thereafter, burden had shifted upon petitioner employer to disprove the same by producing evidence which was in its custody and petitioner has failed to discharge that burden on its part and therefore, in view of that, contention raised by the learned AGP Ms. Mita Panchal cannot be accepted and same is rejected.

17. If it is examined in different manner, then

also, workman is entitled for benefit of protection of section 25F of the ID Act, 1947. No dispute was raised by petitioner before labour court that workman was not in continuous service of more than four years. So, if the workman is satisfying the requirement of section 25-B (1) of the ID Act, 1947, then, it is not necessary for workman to prove continuous service of 240 days within twelve months preceding the date of termination. Section 25-B(1) of the ID Act, 1947 requires one year continuous service and if that requirement is satisfied, then, such workman is entitled protection of section 25-F of the ID Act, 1947. In this case, continuous service of more than four years has not been disputed by petitioner by producing any oral and/or documentary evidence. So, once workman is satisfying requirement of section 25B(1) of the Act, then, such workman is entitled benefit of section 25F. In this case, this aspect was not disputed by petitioner before labour court and,

therefore, considering that aspect also, labour court was right in granting relief in favour of workman. View taken by this Court in case of Moti Ceramics Ind. v. Jivuben Rupa and others [2000 (2) GLR 1558] is clearly applicable to facts of this case.

18. In case of UP State Electricity Board versus Rajesh Kumar 2005 SCC L/S 185, apex court observed as under in para 4:

> "4. The labour court, on the basis of the evidence on record, has recorded a finding of fact that the respondent workmen did work for 240 days. This conclusion is based on the evidence of the workmen and the list of 82 employees which included the names of the respondent workmen. It is also on record that the correctness of this list was not challenged before the Labour Court and the management did not produce any contra evidence or the original records which it possessed to deny the claima or contention of the workmen. Non consideration of the evidence of the Executive Engineer who was examined on behalf of the appellant, in our view, did not affect the case in any way for the simple reason that he was not in service on the relevant dates i.e. The dates on which the services of the respondent workmen were terminated. It is also clear from the impugned judgment that the point with regard to the stale

> claim of the workmen was not raised before the Labour Court. For the first time it was sought to be urged before the High Court. We may also add that if the appellant was really aggrieved and serious as to the stale claim of the respondent workmen, it was open to the appellant management to question the very reference made by the State Government in the year 1997 itself. The validity of the reference was not questioned. Thereafter, the management participated in the proceedings before the Labour Court and suffered the award. The management further, unnecessarily challenged the award of the Labour Court before the High Court. From the award of the Labour Court, it is clear that the relief granted to the workmen was only with regard to the reinstatement with continuity of service. The back wages were awarded only from the date of reference and not from the dates of termination of their services. This is how the Court has moulded the relief. We are told that when the proceedings were pending in the High Court, the respondent workmen are already reinstated. "

19. This aspect has also been examined by Division Bench of this Court [Coram : R.S. Garg and R.R. Tripathi,JJ.] in Letters Patent Appeal No. 202 of 2005. Relevant discussion made in para 10 and 11 is reproduced as under :

"10. The question of burden of proof would lose its importance when the question of onus of proof is taken up for consideration. In a given case, the basic burden may be upon a particular party and if the party does all what is required under the law, then the basic burden would stand discharged and the burden would be shifted upon the other side to disprove what has been said by the first party. It cannot be disputed nor can be argued that the official records are always available with the Department. A workman, if appears in the Court, enters the dock and makes a statement on oath that he had worked for 240 days in a year and the statement is not denied by the other side, or not controverted either, then the said statement can be taken to be correct. In the present matter, the workmen did work for 240 days and if that be so, the burden shifted and the burden was on the other side to disprove the allegations made by the workman. The best of the evidence would be the records which are regularly mainained by the Department. The Department cannot be allowed to say that even if the basic burden was discharged, they were not required to produce the records which they possessed. If the best evidence is kept back or is not produced in the Court, then the Court would be justified in drawing an adverse inference against the party which could produce the best evidence in the Court.

11. In the matter of M.P. Electricity Board (Supra), the Supreme Court was considering the case where the first Court which could draw an adverse inference did not draw any inference and it was in the appeal where the Industrial

> Court, for the first time, had drawn adverse inference and the said finding was approved by the High Court. In the present matter, when the Labour Court, after giving its anxious consideration to the facts of the case and the evidence available on record, has recorded a finding and the said finding is approved by the learned Single Judge, it would not be for the Letters Patent Court to interfere with the discretion exercised by the Labour Court and the finding which was approved by the learned Single Judge. We must observe that the Labour Court was absolutely justified in drawing an adverse inference against the interest of the appellant. We find no reason to interfere in the matter and the appeals are dismissed. Notice is discharged. There shall be no order as to costs. "
> [See Surendranagar District Panchayat v/s.Dahyabhai Amarsinh reported in 2003 (3) GLH 735 DB (Guj) and State of Rajasthan v/s Sher Singh and others reported in 2004 LLR 157 DB Rajasthan High Court.

20. Contention raised by learned AGP that workman had not completed 240 days continuous service in preceding twelve months from the date of termination cannot be accepted as there is no evidence led by petitioner contrary to oral evidence of workman on oath before labour court. One document showing working days for limited period from 1st February, 1985 to 30th June, 1985 was produced by petitioner but it was not proved by petitioner before labour court. However, learned AGP relied upon decision of Division

Bench of this Court in case of Executive Engineer (Mechanical) versus Chetan P. Oza 2005 (2) GLH 742. Relevant discussion after considering two decisions of apex court in case of UP Drugs and Pharmaceuticals Co. Ltd. V/s. Ramanuj Yadav and others 2004 SCC L/S 46 and Mohan Lal versus Bharat Electronics Ltd. 1981 (3) SCC 225, Division Bench observed as under in para 7, 8 and 9 :

> “7. In the said matter, the Supreme Court was dealing with the provisions of UP Industrial Disputes Act, 1947 (28 of 1947) Section 6 has been quoted by Their Lordships in paragraph – 4 of the said judgment. A perusal of Section–6 of the UP Act shows that it is virtually pari materia with section 25(B) of the I.D. Act. In paragraph 5, the Apex Court has referred to the definition of 'continuous service', as employed in the UP Act. The definition employed in the UP Act, reads as under:
> '2. (g) 'Continuous service' means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lockout or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.
>
> Explanation – In computing the number of

days on which a workman has actually worked in an industry, the days on which

(i) he has been laid off under the agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or any other law applicable to industrial etablishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause.
(ii) he has been on leave with full wages, earned in the previous year, and
(iii) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks, shall be included'

It is also immediately noticed that while Section 25(B) requires an employee to show that he had worked wor a period of 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made (Emphasis supplied), the UP Act, for application of the definitions of continuous service, does not require an employee to show that he has worked for 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made.

8. A judgment of the higher court or even of the same court would always be binding upon us if the provisions before us were the provisions before the coordinate Bench or higher Court. If two definitions of continuous service are different, then, the definition employed in one Act cannot be employed in any other Act because that would lead to a dangerous

situation. The law of interpretation clearly says that if same words are used in the same enactment, but in different context, at different places, then, the definition of such words or its interpretation should not be applied to the different provisions of the same Act. Present is a case where Mr. Mishra, with his usual vehemence, is trying to import the definition of the UP Act into the ID Act.

9. It is also tob e seen from the said judgment of the Supreme Court that referring to Mohan Lal's case, Their Lordships clearly observed that in the matter of Mohan Lal, the Supreme Court, on an earlier occasion, had observed that Clause 2(a) of Section 25(B) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of twelve calendar months counting backward and just preceding the relevant date i.e. The date of retrenchment. When the Supreme Court says that the employer has to prove that he had worked for 240 days during the period of twelve calendar months counting backward and just preceding the relevant date, then, there is no scope to hold that the words 'just preceding' are otoise or superfluous or have no importance. A judgment is a judgment for what it decides. A judgment cannot be applied without appreciating the legal provisions involved and the factual situation simply on the ground that it takes a different view from the earlier view. It must be shown to the Court that

> very same provisions of law have been differently interpreted by the Supreme Court or by the Larger Bench of the High Court or there is a conflict of views in judgment of coordinate Bench. In the matter of UP Drugs & Pharmaceuicals CO. Ltd. (supra), the Supreme Court while referring to Section 2(g) and 6 (N) of the UP Act has clearly observed that in view of the language employed in Section 2(g) an intention cannot be attributed to the UP Act that if the workman has not worked for 240 days in just preceding year, he holds no right. The Supreme Court did not interpret the Mohan Lal's case nor had over ruled the said authority. But has distinguished the same on the facts and different provisions of law. The judgment in the matter of Mohan Lal (supra) still holds good. Undisputedly the respondent has not completed 240 days in just preceding twelve calendar months, he would not be entitled to any benefits under Section 25(F) read with section 25(B) of the ID Act."

21. This aspect of section 25(B) (1) of the ID Act was also examined by Division Bench of this Court in Special Civil Application No. 8275 of 1998 dated 29th April, 2005. Relevant paragraph 9 is quoted as under :

> "9. The question whether Telephone Department is an industry has been answered by the Apex Court in General Manager Telecom vs. A Srinivasa Rao and others (1997.8 SCC 767) overruling two of

its earlier decisions in Sub Divisional Inspector of Post v. Theyyan Joseph (1996.8 SCC 489) and Bombay Telephone Canteen Employees' Assn. v. Union of India (1997.6 SCC 723 : AIR 1997 SC 2817). Once Telecom Department has been held 'industry' by Apex Court in A. Srinivasa Rao case (supra), Himanshu Kumar Vidyarthi case (supra) isnot helpful to the respondents in this case. Daily wager is entitled to protection of section 25F of ID Act provided he has continuously served for a requisite statutory minimum period in a year. Having done so, termination of service of such a workman without complying with section 25F is illegal (See Rattan Singh v.Union of India and another 1997.11.SCC 396) It is contended by the respondents that petitioner did not complete 240 days in a year. We fail to understand this contention. In the affidavit of Vinod Prakash, TDM Junagadh dated nil November, 1992 it is stated in paragraph 7 that the petitioner was relieved from service with effect from 28.5.1989 and not in 1990 as suggested by the applicant. With this background, the documents filed by the respondents vide affidavit of SP Snehi, AGM (Admn.) O/o GMTD Junagadh dated 17.2.1998 may be examined. Counting backwards from 27.5.1989 to 20.5.1988 during the year 1989-88, the total working period comes to 240 days in a year taking into consideration the per day normal working hours of an employee. The case of petitioner, who falls under section 25B(1) he having been in continuous service for a year, as such satisfies the requirement of sections 25B (1) and 25B (2) of the ID Act. (See Moti Ceramic Industries v. Jivuben Rupabhai and others (2000-2 (41)

> GLR 1558) and Workmen of American Express International Banking Corporation v. Managementof American Express International Banaking Corporation (AIR 1986 SC 458). Therefore, the petitioner is entitled to protection 2 5F of the ID Act both ways. The termination is hit by section 25F r.w. Rule 77 of Industrial Disputes (Central) Rules, 1957, therefore, it amounts to retrenchment, being violative of these provisions."

22. Recently, Division Bench of Bombay High Court has considered effect of language incorporated in section 25F in respect of 240 days in preceding twelve montns from the date of termination in case of Jayraj N. Sethi versus Union of India reported in 2005 CLR 106. Division Bench of Bombay High Court has come to the conclusion that it is not necessary while interpreting section 25F that workman should have to prove 240 days continuous service in the year immediately preceding the date of termination. After examining decision of apex court in UP Drugs and Pharmaceuticals CO. ltd. (supra), Division Bench of Bombay High Court has also considered the case of Mohan Lal versus Bharat Electronics (supra).

Relevant para 6 and 7 are reproduced as under :

> “6. In UP Drugs and Pharmaceuticals CO. Ltd. The Supreme Court discussed Section 25-B as existed originally and so also after amendment by the Industrial Disputes (Amendment) Act, 1964. In paras 9, 10 and 11 of the report, it was held thus;
> “9. The amending Act of 1964 deleted section 2(eee) having incorporated in Section 25-B itself the definition of 'continuous service'. It also brought in the concept of preceding twelve calendar months. The earlier definition did not mention 'preceding' with reference to the period of twelve calendar months. It appears that the decision of this Court in Sur Enamel and Stamping Works Ltd. v. Workmen, interpreting sections 2(eee) and 25B led to the amendments made by the amending Act of 1964. In Sur Enamel and Stampaing Works Ltd. v. Workmen, interpreting Sections 2(eee) and 25B, it was held that twin conditions were required to be fulfilled before a workman can be considered to have completed one year of continuous service in an industry. It must be shown first that the workman wsa employed for a period of not less than twelve calendar months and next that during those twelve calendar months, he had worked for not less than 240 days. In that case, the workman had not been employed for a period of twelve calendar months. Therefore, the Court held that it was necessary to examine whether actual days of work were 240 or more for in any case the requirements of Section 25B would not be satisfied by the mere fact of number of working days being not less than 240 days. The effect was that if a workman

completes actual 240 or more days of work in less than twelve calendar months, he could not be entitled to the benefit of beneficial legislation. This anomaly led to the amendment of the ID Act in the manner above stated.

10. Under the aforesaid legislative background, the question involved is required to be reconsidered. Section 2(g) of the UP Act does not requires a workman, to avail the benefit of the deeming provision of completion of one year of continuous service in the industry, to have worked for 240 days during the preceding period of twelve calendar months.The word preceding has been used in section 25B of the ID Act as incorporated in the year 1964. S.2(g) does not use the word 'preceding'. The concept of preceding was introduced in the ID Act so as to give complete and meaningful benefit of the welfare legislation to the working class. The approach to be bornt in mind while interpreting the welfare legislation is illustrated in Surendra Kumar Verma v. Central Government Industrial Tribunal cum Labour Cout where this Court has observed that semantic luxuries are misplaced in the interpretation of bread and butter statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief again certain kinds of mischief, the Court is not to make inroads by making etymological excursions.

11. The learned counsel for the appellant, however, relies upon Mohan Lal v. Bharat Electronics Ltd. In that case, the Court was considering the scope of section 25B of the ID Act. It was observed that in order to invoke the fiction enacted in

clause 2(a) of section 25B, it is necessary todetermine first the relevant date i.e. The date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of twelve months just preceding the date of retrenchment and then ascertain whether within a period of twelve months, the workman has rendered service for a period of 240 days It was held that if these three factors are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in Clause (2)(a), it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25F. In Mohan Lal case the appellant was employed with the respondent from 8.12.1973. His services were abruptly terminated by a letter dated 12.10.1974 w.e.f. 19.10.1974. This Court said that it is not necessary for the purpose of Clause 2(a) of Section 25B that a workman should be in service for a period ofone year. It was held that if he is in service for a period of one year and that his service is continuous service within the meaning of sub section (1), his services would be governed by sub section (1) and his case need not be covered by sub section (2). Sub section (2) envisages the situation not governed by sub section (1) Clause 2(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of twelve calendar months counting backward and just preceding the

relevant date i.e. The date of retrenchment. These were the facts under which it was held as to how the period of 240 days was to be calculated. The decision in the case of Mohan Lal does not lay down that if a workman had worked for more than 240 days in any number of years and if during the year of his termination, he had not worked for the said number of days, he would not be entitled to the benefit of section 25B. The question with which we are concerned was not under consideration in Mohan Lal case. If the view point propounded by the management is accepted, then every year the workman would be required to complete more than 240 days. If in any one year the employer gives him actual work for less than 240 days, the service of the workman can be terminated without compliance with section 6N of the UP Act, despite his having worked for a number of years and for more than 240 days in each year except the last. Such an intention cannot be attributed to the UP Act. In the present case, as already noticed, the finding of the Labour Court is that the respondents worked for more than 240 days in each year from 1983 to 1986 but not having worked for 240 days in the year of termination, the termination was held by the labour court not to be violative of section 6N. Reference may also be made to the decision in Ramakrishna Ramnath v. Presiding Officer, Labour Court, Nagpur where this Court observed that the provision requiring an enquiry to be made to find out whether the workman has actually worked for not less than 240 days during a period of twelve calendar months immediately preceding the retrenchment does not show that a workman, after

> satisfying the test, has further to show that he has worked during all the period he has been in service of the employer for 240 days in the year. The interpretation propounded for the appellant is wholly untenable. The decision in UP State Coop. Land Developemtn Bank Ltd. v. Tax Mulk Ansari relied upon by the learned counsel for the appellant has no applicability since that was a case of Clause (a) of section 6-N and, therefore, section 2(g) had no relevance.
>
> 7. Mr. Suresh Kumar, the learned counsel for the railways could not dispute that in view of the judgment of the Supreme Court in the case of UP Drugs and Pharmaceuticals CO. Ltd., the view of the learned single judge could hardly be supported. He fairly stated that in the light of the judgment cited spra, thelegal position is crystalised that under section 25B of the Industrial Disputes Act, if a workman has worked for more than 240 days in earlier years or any one of the earlier years, he would be deemed to be in continuous service. In our view, this is correct re ading of UP Drugs and Pharmaceuticals Co. Ltd. And in view thereof the judgment of the learned single Judge has to be set aside."

23. Therefore, in view of the aforesaid decision, it is not necessary for workman to satisfy that he has completed continuous service of 240 days within twelve months preceding the date of termination of his service once it is proved that

the workman is satisfying the requirement of section 25B of the ID Act. Looking to the facts of this case, it is not necessary that the case is rested here because workman has completed more than four years service as watchman continuously which would satisfy requirement of section 25B(1) of ID Act entitling workman for the protection of section 25F of the ID Act, 1947 (See Moti Ceramics Ltd. (supra). So, in both ways, workman is entitled for benefit/protection of section 25F of the ID Act, 1947 which is not admittedly complied with by the petitioner before terminating service of workman, therefore, order of termination is void ab initio and labour court was, therefore, right in granting relief in favour of the workman.

24. As regards the contention raised by the learned AGP about delay in raising of an industrial dispute for a period of eight years from the date of termination, looking to the written statement of the petitioner, it appears

that specific contention has not been raised except one line that the reference is barred by delay. No submissions were made by the petitioner before the labour court on that aspect. According to this court, raising of an industrial dispute belatedly cannot be fatal on the ground of delay. Petitioner has not challenged order of reference on that ground. On the contrary, petitioner participated in reference proceedings before the labour court. It allowed labour court to decide it on merits. No submissions were made by it before labour court. No prejudice is shown before labour court because of such delay. In case of SM Nilanjkar and others versus Telecom District Manager, Karnataka, AIR 2003 SC 3553, apex court observed that delay would certainly be fatal if it has resulted in material evidence relating to adjudication being lost and rendered not available. [also see : UP State Electricity Board versus Rajesh Kumar 2005 SCC L/S 183 where delay in raising of an industrial dispute of 19 years

was considered by apex court and condoned by apex court on the ground that the order of reference was not challenged by employer before higher forum and employer participated in proceedings before labour court and suffered award. Labour court granted full back wages but granted it only from the date of reference and not from the date of termination. According to apex court, looking to from all angles, substantial justice is done and it does not require interference.

25. In view of the above observations and considering the facts of the present case, when no specific contention has been advanced before labour court by petitioner, when order of reference was not challenged by petitioner before Higher Forum but petitioner participated in reference proceedings before labour court, petitioner now cannot be permitted to raise such contention. Further, the contention that the labour court has not taken into consideration the aspect of delay while granting relief is

incorrect since labour court has taken it into consideration while granting relief of reinstatement and considering the aspect of back wages, therefore, contention about delay raised by the learned Asstt. GP cannot be accepted. Same is, therefore, rejected.

26. While dealing with this case, this Court is having impression, why State Government decided to challenge such award when State Government was at fault in not making out their case before labour court by filing proper written statement and then by leading oral and documentary evidence in support of the written statement. Advocate was engaged by petitioner before labour court to represent its case before labour court who filed written statement and also cross examined respondent. Concerned officer of petitioner must have properly instructed/brief advocae concerned before labour court. Concerned officer of petitioner must have attended proceedings before labour court. Why care has not been taken to

produce oral and documentary evidence before labour court? Why no efforts were made by petitioner before labour court for reopening right of oral evidence which was closed by labour court by order below Exh. 14 after giving various opportunities to petitioner to led evidence, oral and documentary as well. Why advocate has not made any request to the labour court to reopen such right by tendering application to that effect? No such efforts have been made by petitioner and its advocate before labour court. On the contrary, without getting right of evidence reopened, advocate appearing for petitioner before labour court advanced arguments knowing fully well that the result will go against petitioner. From all these things, it would appear that the department is not taking any action against the erring officer concerned and also against the concerned erring advocate. Whether the advocate appearing before the labour court was properly instructed by concerned

officer looking after the case or not? All these questions have remained unanswered. Not only that, on what basis, opinion was given to challenge such award before higher forum by legal department? On what basis, such permission was given by Legal Department and on what ground, such challenge is necessary. It is required to be looked into by the Chief Secretary of the State of Gujarat. Normally, State Government is worried about amount of public exchequer, having great concerned that the amount of public exchequer is not wasted unnecessarily. Then why such amount of public exchequer has been wasted without taking proper care at proper stage. While granting opinion for challenging the award before higher forum, why it has not been considered whether it is a fit case for filing petition before High Court or not and why aforesaid lacunas were not taken into consideration by the Legal Department before granting permission to challenge award before this court. All these aspects were pointed

out by this Court to Ms. Mita Panchal, learned AGP appearing for the petitioner but she was persistently not giving any answers to the same. On the contrary, attempts were being made for diversion. Unnecessarily, without basis of any evidence or material whatsoever, she argued the matter relying upon the decision of Full Bench of this Court. Further, ad interim relief in this petition was not extended beyond 6th September, 2001 and yet, learned AGP appearing in this matter has not made any request before this court at any time to extend the ad interim relief and it remained unextended after 6th September, 2001. In such circumstances, vigilant Government Pleader or the Assistant Government Pleader must take note of such thing and to move court in time for extension of such interim or ad interim relief. Because of the inaction on the part of the Government Pleader and also because of the lethargic approach on the part of the concerned officer looking after this matter, State

Government has to pay unnecessarily amount of full back wages of about four years to workman without taking any work from workman. Is is not suggestive of the fact that there is lethargic approach first on the part of the concerned officer looking after the matter firstly before the labour court and then before this Court and secondly on the part of the Advocate appearing before the labour court for petitioner and then on the part of the Government Pleader/Assistant Government Pleader representing the petitioner before this Court since it has ultimately resulted into wastage of the amount of public exchequer ? If actions would have been taken in time considering the situation, either to reinstate workman for avoiding payment of wages without taking work from workman or to obtain further ad interim relief, then, it would have saved amount of public exchequer for which State Government is much worried. These are serious lapses on the part of the concerned erring

officer and AGP/GP requiring attention of the Chief Secretary of the State of Gujarat for enabling him to decide whether it would require initiation of appropriate steps against such erring officer looking after the matter before Labour court and then before this Court and the advocate and Government Pleader/AGP appearing before this Court in the interest of the State Government and public.

27. Therefore, petitioner has not been able to produce any material except raising contention in written statement and then to complain against the award passed by Labour Court that it has committed error in passing such award without considering fault committed by the AGP before Labour Court. If no material is placed by petitioner before Labour Court, naturally, Labour Court had no option but to rely upon evidence of workman and to pass award in accordance with law, which has been done in this case. It is also surprising that on the basis of this material and

no oral or documentary evidence produced and proved from side of petitioner before Labour Court, on what material and on what basis, permission has been granted by Legal Department of State to challenge such award when apparent fault and default of Department and advocate is glaring on record. However, I am going into further question that who is responsible for such unnecessary litigation against poor workman who remained out of job since 1985 and after award since 2001. Though ad-interim relief was not extended from 6.9.2001, no steps have been taken so far by petitioner to reinstate the workman. Therefore, according to my opinion, submissions which are made by learned AGP Ms.Mita Panchal are contrary to record and even contrary to law. Labour Court has rightly examined issue on the basis of material produced before it by parties and Labour Court has rightly set aside termination order and rightly granted reinstatement with continuity of service and

rightly not examined the issue whether Forest Department is an industry or not in absence of evidence which has not been placed by petitioner before it. The petitioner has failed to prove contention raised before the Labour Court in written statement. Therefore, Labour Court has not committed any error while passing such award. There is no illegality committed by Labour Court and rightly full back wages have not been granted for interim period from date of termination till date of reference and after considering some part of gainful employment, Labour Court has rightly granted only 20% back wages for interim period from date of reference 15.6.1992. Therefore, learned AGP has failed to point out any infirmity in award and therefore, there is no substance in present petition and as such, it is required to be dismissed.

28. Another aspect of this matter is also required to be noted. In his deposition recorded at Exh. 9 before the labour court, workman has

deposed in clear terms that after termination of his service, one Shri Jagabhai was engaged by the establishment; fresh persons have been engaged.; while engaging them, he was not offered job. This evidence of the workman has also remained unchallenged and uncontroverted and not denied by the petitioner. No rebuttal evidence was produced by the petitioner before the labour court. Respondent workman was not offered job before employing fresh hands. Therefore, petitioner has also committed breach of section 25-H of the Industrial Disputes Act, 1947. In view of that also, respondent workman is entitled for reinstatement because it is independent section and not linked with section 25-B or 25-F of the ID Act, 1947. Legal right of re-employment is independent right irrespective of the fact whether workman had completed 240 days continuous service or not. Moment retrenchment of workman is established, section 25-H of the ID Act would apply as independent section. Moment it is

established that new persons were engaged without first offering to those who were retrenched earlier, such retrenchment would be rendered illegal for want of compliance of section 25-H. When new employee is recruited or engaged by the employer in place of respondent, then, there is no justification for the petitioner to terminate the services of the respondent. It is the duty of the petitioner to satisfy the labour court that the retrenchment of respondent is legal and justified but in this case, petitioner has not been able to establish that the retrenchment of the respondent is legal and/or justified. Thus, looking from this angle also, award of reinstatement is doing substantial justice between the parties. Before this Court also, no submissions have been made by Ms. Mita Panchal on this aspect of subsequent engagement of new person/s after retrenchment of the workman. Thus, on two counts, respondent is entitled for reinstatement. One for want of compliance of

section 25-F of the ID Act, 1947 and also for want of breach of section 25-H of the ID Act, 1947 and, therefore, in either way, award of reinstatement of the workman cannot be interfered with by this Court.

29. It is true that this Court has very limited jurisdiction under Article 227 of Constitution and this Court cannot act as an appellate authority. This Court even cannot re-appreciate evidence as appreciated by Labour Court and award passed by Labour Court based on facts, being a fact finding authority. This Court also cannot disturb such findings of facts which are arrived at by Labour Court on basis of evidence led before it. Even if two views are possible, this Court cannot interfere with th same while exercising powers under Article 227 of the Constitution. Hence, according to my opinion, there is no substance in this petition. Therefore, petition is dismissed. Rule is discharged. Ad. Interim relief, if any, shall

stand vacated.

30 Ordinarily, this Court may not pass any order against petitioner in petition filed by petitioner. However, looking to peculiar facts of this case, on the basis of record and in absence of respondent, this Court has thought it fit to pass appropriate orders for implementation of award in question. Ad-interim relief granted by this Court on 11.6.2001 has come to an end on 6.9.2001. Therefore, Range Forest Officer, Extension Range, Kheradi Road, Surendranagar, is directed to reinstate respondent-workman in service within a period of one month from date of receipt of copy of this order. Petitioner - Range Forest Officer, Extension Range, Kheradi Road, Surendranagar, is further directed to pay 20% back wages to respondent-workman from 15.6.92 to 5.8.2000 within a period of six weeks from date of receipt of copy of this order. The petitioner - Range Forest Officer, Extension Range, Kheradi Road, Surendranagar is further directed to pay

full back wages to respondent-workman with effect from date of award, i.e. 5.8.2000 till date of his actual reinstatement, within a period of eight weeks from date of receipt of copy of this order. This Court, considering the facts of this case, is compelled to pass such orders which normally this Court does not pass.

31. Office is directed to send copy of this judgment to the Chief Secretary to the Government of Gujarat, Gandhinagar without any delay, within fifteen days from the date of receipt of papers by the Registry.

(H.K.Rathod, J.)

(sunil/vyas)